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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,375	02/07/2001	Mattias Schmidt	8414Q	6856

27752 7590 07/19/2004

THE PROCTER & GAMBLE COMPANY
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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

12

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/778,375

Applicant(s)

SCHMIDT ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 11 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 9, 12 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 6, 2004 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 1 – 16 have been considered but are moot in view of the new ground(s) of rejection. The examiner notes that the applicant has failed to address the previous grounds of rejection with respect to the Hasse reference. Therefore, all previous rejections with respect to the Hasse reference are considered valid and have been maintained by the examiner.

Claim Objections

Claims 6 and 14 – 16 are objected to because of the following informalities: it is suggested that the term “effects” be changed to “affects” for purposes of clarity.

Appropriate correction is required.

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Robinson (WO 98/31402).

With respect to claim 1, Robinson discloses an absorbent article comprising a liquid impervious backsheet (3), a liquid pervious topsheet (2) joined to the backsheet (figure 1), an absorbent core disposed intermediate the topsheet and the backsheet (6) and a phase change material (5) disposed on at least a portion of the article as set forth on page 2, lines 4 – 7.

As to claim 2, Robinson discloses an absorbent article for use by a wearer wherein the phase change material changes phases in response to a change between the backsheet of the article and the skin of the wearer in relative humidity, moisture or temperature as set forth on page 2, lines 4 – 7.

Claims 1, 10 – 11 and 14 – 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Hasse (US 5,591,146).

With respect to claim 1, Hasse discloses an absorbent article comprising a backsheet (26), a liquid pervious topsheet joined to the backsheet (24), an absorbent core disposed intermediate to the topsheet and the backsheet (28), and a phase change material (89) disposed at least on a portion of the article as set forth in figure 2.

As to claim 10, Hasse discloses an absorbent article wherein the thermal cell actuator is removable from the article as set forth in col. 10, lines 35 – 39 and figure 2.

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The thermal cell actuator, or microcapsules, are removable from the article upon the removal of the release liner which releases the perfume from the microcapsules.

As to claim 11, Hasse discloses the thermal cell actuator being attachable to the article as set forth in col. 7, lines 11 – 16. The attachment system which houses the thermal cell actuator (microcapsules) is taught as being attached to the article via an adhesive layer (90).

With reference to claim 14, Hasse discloses an article wherein the phase change material effects a decrease in malodorous vapors in the article when the phase change material changes phases as set forth in col. 11, lines 5 – 8.

As to claim 15, Hasse discloses an absorbent article wherein the phase change material effects an increase in fragrance in the article when the phase change material changes phases as set forth in col. 11, lines 5 – 8.

Hasse discloses a material that encapsulates a fragrance. As the system is manipulated, the microcapsules are released and change from one phase (encapsulated) to another phase (diffused) as taught by Hasse in col. 8, lines 16 – 18.

As to claim 16, Hasse discloses an absorbent article comprising a liquid impervious backsheet (26), a liquid pervious topsheet joined to the backsheet (24), an absorbent core disposed intermediate to the topsheet and the backsheet (28), and a thermal cell actuator (95,96) disposed on or adjacent to at least on a portion of the article to effect a change in at least one property other than temperature in at least a portion of the article as set forth in col. 11, lines 5 – 26.

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The thermal cell actuator is in the form of microcapsules that effect malodor of the article upon their release.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 5,156,911).

With respect to claim 1, Stewart discloses an absorbent article (col. 4, line 10) comprising a phase change material disposed on at least a portion of the article as set forth in col. 3, lines 49 – 58.

The difference between Stewart and claim 1 is the provision that the absorbent article comprises a liquid impervious backsheet, a liquid pervious topsheet joined to the backsheet and an absorbent core disposed intermediate the topsheet and the backsheet.

It would have been obvious to one of ordinary skill in the art to provide the absorbent article of Stewart with a liquid pervious topsheet joined to the backsheet and an absorbent core disposed therebetween because Stewart discloses a bandaid as being suitable for use with the invention (col. 4, line 11), and it is well known in the art

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that the structure of a bandaid, or bandage, encompasses a liquid pervious topsheet joined to a liquid impervious backsheet with an absorbent core disposed therebetween.

As to claim 2, Stewart discloses an absorbent article for use by a wearer wherein the phase change material changes phases in response to a change between the backsheet of the article and the skin of the wearer in relative humidity, moisture or temperature as set forth in col. 3, lines 49 – 58.

With reference to claim 3, Stewart discloses an absorbent article wherein the phase change material will change from a liquid to a solid or from a solid to a liquid in response to a temperature change in the absorbent article as set forth in col. 4, lines 45 – 48.

As to claim 4, Stewart discloses an absorbent article wherein the phase change material changes phases at a temperature between about 30° C and about 37° C as set forth in col. 4, lines 39 – 42.

As to claim 5, Stewart discloses an absorbent article wherein the phase change material changes phases at a temperature between about 32° C and about 35° C as set forth in col. 4, lines 39 – 42.

With reference to claim 6, Stewart discloses an absorbent article wherein the phase change material is effected by relative humidity or temperature within the article or between the article and the wearer as set forth in col. 4, lines 45 – 48.

Regarding claim 7, Stewart discloses a phase change material selected from the listed group as set forth in col. 6, lines 30 – 38.

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The difference between Stewart and claim 8 is the provision that the phase change material has a latent heat energy of at least about 200kJ/kg.

Stewart discloses an article having a phase change material with latent heat energy greater than 20 J/g as set forth in col. 14, lines 52 – 53.

It would have been obvious to one of ordinary skill in the art to modify the latent heat energy of Stewart to provide the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable value involves only a level of ordinary skill in the art.

Allowable Subject Matter

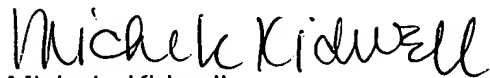
Claims 9, 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michele Kidwell
March 22, 2004